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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,832	06/24/2003	Michael Werth	ATOCM-332	9062
23599	7590	02/22/2006		
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/601,832	<b>Applicant(s)</b> WERTH, MICHAEL	
	<b>Examiner</b> Walter B. Aughenbaugh	<b>Art Unit</b> 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

### **ADVISORY ACTION**

1. Applicant's Request for Reconsideration filed February 2, 2006 has been fully considered but is not persuasive.
2. Applicant's arguments regarding the 35 U.S.C. 102 rejection of claims 1 and 9 have been fully considered but are not persuasive.

On page 2 of the Request for Reconsideration, Applicant apparently argues that Strassel does not teach either of the thermoplastic polymers recited in claim 1. Strassel et al. plainly teach polyamide as a suitable material for the shrinkable polymer layer, item 9, at col. 5, line 24.

The discussion on page 5 of the previous Office Action mailed November 2, 2005 was intended to apply to Strassel et al. Since polyamide, is mentioned by Strassel et al., Strassel et al. anticipates claim 1. Thermoplastic polyamides fall within the scope of the teaching of "polyamide". Applicant's argument in the last response regarding the polyether amide is irrelevant since the polyether amide is taught as a suitable polymer for the elastomer layer 8 (see col. 8, lines 28-31 and the section entitled "The elastomeric polymers" at col. 5, line 57- col. 6, line 35), whereas the polyamides taught at col. 5, line 24 are taught as a suitable polymer for layer 9 (col. 8, lines 31-34).

In regard to Applicant's arguments in the first paragraph of page 3 of the Request for Reconsideration, paragraph 5 of the Office Action mailed March 7, 2005 explains which layer of Strassel et al. corresponds to each of the claimed layers. Since this rejection does not discuss layer 8, and since this rejection correctly explains which layer of Strassel et al. corresponds to each of the claimed layers, Applicant's discussion of layer 8 is irrelevant. Applicant relies upon Fig. 1-3 in these arguments, but paragraph 5 of the Office Action mailed March 7, 2005 relies

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upon solely Fig. 3. Applicant's discussion about any layer being "next to" any other layer is also irrelevant since the open language of claim 1 does not require that any layer be next to any layer.

3. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claim 10 have been fully considered but are not persuasive.

Applicant's arguments here depend entirely Applicant's argument in regard to the 35 U.S.C. 102 rejection of claims 1 and 9 which have been addressed above in this Advisory Action. Applicant continues to address layer 8 here when it is layer 9 that is relied upon in the rejection of record. The rejection does not propose using the blend of Flepp et al. as the material of layer 8, but as the material of layer 9. One of ordinary skill in the art would have recognized to have used the blend of a polyamide and a polyolefin having a polyamide matrix taught by Flepp et al. as the mixture of polyolefin and polyamide of the inner layer of Strassel et al. since a blend of a polyamide and a polyolefin having a polyamide matrix is a well known adhesion-promoting material for use as the material of an inner layer of a multilayer hose as taught by Flepp et al.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

02/17/06

WBA

  
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1772

2/20/06